

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

KORRIE JOHNSON,

Plaintiff,

vs.

CASE NO. _____

BARNETT OUTDOORS, LLC,

Defendant.

_____/

DEFENDANT'S NOTICE OF REMOVAL

AND NOW comes Defendant, BARNETT OUTDOORS, LLC ("Barnett"), by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, respectfully requests the above-captioned matter be removed from the Supreme Court of the State of New York, County of Ontario to the United States District Court for the Western District of New York. In support of this Notice of Removal, Barnett states as follows:

I. INTRODUCTION

1. Plaintiff commenced this civil action on March 18, 2021 in the Supreme Court of the State of New York, County of Ontario styled KORRIE JOHNSON v. BARNETT OUTDOORS, LLC. The action was assigned docket number 128998-2021.

2. This lawsuit is a civil action within the meaning of 28 U.S.C. §§1441(a) and 1446(b).

3. In his Complaint, Plaintiff pleads four counts against Barnett seemingly sounding in negligence, strict products liability, breach of warranties, and failure to warn.

4. Barnett received informal notice of the lawsuit on March 19, 2021, but as of the date of this filing, has not been formally served with the complaint or a summons. Pursuant to

28 U.S.C. § 1446(a), copies of all process, pleadings, and orders provided to Barnett are attached hereto as **Exhibit A**.

5. Pursuant to Local Rule 81 of the United States District Court for the Western District of New York, Barnett has also provided a Civil Cover Sheet, attached as **Exhibit B**, and attached each and every document filed and/or served in the State Court action, individually tabbed and arranged chronologically along with the mandated index attached as **Exhibit C**.

6. This Notice of Removal is timely filed within thirty (30) days of receipt of Plaintiff's Complaint via electronic mail.

7. By filing a Notice of Removal in this matter, Barnett does not waive its rights to object to jurisdiction over the person, or venue, and the expiration of the applicable statute of limitations, and it specifically reserves the right to assert any other defenses and/or objections to which it may be entitled as a matter of law or equity.

II. VENUE

8. The United States District Court for the Western District of New York is the federal judicial district embracing Ontario County, New York. Therefore, venue lies in this Court pursuant to 28 U.S.C. § 1441(a).

III. DIVERSITY JURISDICTION

9. Barnett's basis for removal to federal court is diversity jurisdiction pursuant to 28 U.S.C. § 1332 as there is complete diversity of citizenship between Plaintiff and Barnett and on information and belief, the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

10. For the purposes of diversity jurisdiction, a limited liability company has the citizenship of each of its members and/or owners, and complete diversity exists where all of the

limited liability company's members are diverse from all parties on the opposing side. *Bayerische Landesbank, New York Branch v. Aladdin Cap. Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012); *Boergers v. Miami Dolphins, Ltd.*, 2019 WL 6297203, at *1 (W.D.N.Y. Nov. 25, 2019).

11. Barnett is a single-member limited liability company organized under the laws of the State of Florida. The sole member of Barnett is Wildgame Innovations, LLC. Wildgame Innovations, LLC is a single-member limited liability company organized under the laws of the State of Louisiana. The sole member of Wildgame Innovations, LLC is Synergy Outdoors, LLC. Synergy Outdoors, LLC is a single-member limited liability company organized under the laws of the State of Louisiana. The sole member of Synergy Outdoors, LLC is Plano Molding Company, LLC. Plano Molding Company, LLC is a single-member limited liability company organized under the laws of the State of Delaware. The sole member of Plano Molding Company, LLC is Plano Holding LLC. Plano Holding LLC is a single-member limited liability company organized under the laws of the State of Delaware. The sole member of Plano Holding LLC is Plano Synergy Holding Inc. Plano Synergy Holding Inc. is a Delaware corporation. Thus, for the purpose of diversity jurisdiction, Barnett is a citizen of Delaware.

12. According to the Complaint, Plaintiff has at all relevant times been a resident of the State of New York. (*See* Ex. A ¶1).

13. Therefore, complete diversity of citizenship exists in that Plaintiff is not a citizen of the same state as the sole Defendant, Barnett. *See* 28 U.S.C. § 1332(a)(1).

14. Furthermore, while Barnett denies that Plaintiff is entitled to any monetary relief whatsoever, upon information and belief, the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. *See* 28 U.S.C. § 1332(a).

15. Plaintiff's Complaint alleges that his damages "exceed[] the jurisdictional limits of all lower courts which would otherwise have jurisdiction." (Ex. A, Complaint at ¶¶13, 19, 22, 26). Plaintiff further alleges he "was permanently and seriously injured." (*Id.*)

16. Plaintiff's counsel has supplied photographs of plaintiff's injuries, which depict a puncture wound, facial lacerations and possibly head trauma. (Ex. D, Affidavit of Christopher T. Sheehan, at 4).

17. In addition, plaintiff made a complaint to the Better Business Bureau claiming, "my head is split open, my eye is black, my eye muscles are swollen, my vision is now having issues, my neck is in a lot of pain, I have a concussion, [and] my face is cut up. Doctors said I could have easily died or lost my vision entirely." (*Id.* at 5, Ex. B-1, BBB Complaint). The photographs, medical records and allegations in the complaint set forth a claim with an amount in controversy in excess of \$75,000. (Ex. D, at 6.)

18. A review of publicly available settlements from the Jury Verdict Reports demonstrates that cases involving claims of similar injuries have settled for well in excess of \$75,000.

19. Accordingly, this Court has original jurisdiction of this action based on complete diversity of citizenship of the parties under 28 U.S.C. § 1332 and because the amount in controversy, exclusive of interest and costs, is in excess of \$75,000. *See* 28 U.S.C. § 1332(a)(1). Furthermore, this action is removable from the State court under the provisions of 28 U.S.C. § 1441, *et seq.*

20. Pursuant to 28 U.S.C. § 1446(d), concurrent with the filing of this document with the United States District Court for the Western District of New York, Barnett has filed with the Supreme Court of the State of New York, County of Ontario, and has served upon Plaintiff's

counsel a Notice of Removal (attaching a copy of this document) providing the State court and Plaintiff's counsel notice that Barnett has removed this action to the United States District Court for the Western District of New York.

21. By this Notice of Removal, Barnett is not waiving, and expressly reserves, its right to contest personal jurisdiction and the sufficiency of the State court Complaint attached hereto as Exhibit A.


WHEREFORE, Defendant, BARNETT OUTDOORS, LLC, respectfully requests that this action be removed the Supreme Court of the State of New York, County of Ontario to this Court; that this Court accepts jurisdiction of this action; and that this action be placed on the docket of this Court for all further proceedings, as though this action had been originally instituted in this Court.

Dated: April 9, 2021

Respectfully Submitted,

BARNETT OUTDOORS, LLC

BY:



Michael T. Gioia
DICKIE, MCCAMY & CHILCOTE, P.C.
50 Fountain Plaza, Ste. 1464
Buffalo, New York 14202
(716) 961-3237
mgioia@dmclaw.com

*Attorneys for Defendant Barnett
Outdoors, LLC*

CERTIFICATE OF SERVICE

I, the undersigned attorney, on oath, state that I filed the following electronically, Defendant's Notice of Removal through the ECF electronic filing system and served it by Electronic Mail on April 9, 2021:

Andrew J. Connelly, Esq.
ANDREWS, BERNSTEIN, MARANTO & NICOTRA, PLLC
420 Franklin Street
Buffalo, New York 14202
(716) 842-2200
aconnelly@wnyinjurylawyers.com

